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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,698	07/20/2006	Akifumi Hayashi	06462LH	7832
1933 7590 07/07/2009 FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
07/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/586,698

Applicant(s)

HAYASHI ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-12 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-11 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 8-11 and 21 have been considered but are moot in view of the new ground(s) of rejection prompted by applicant's amendment to the claims. However, examiner will briefly address applicant's arguments herein. Davis discloses regions 52 where the side flaps 40 (which include portions of backsheet 30 forming said flaps) are bonded to themselves and then discloses that alternatively, the side flaps can be folded over and bonded to the topsheet. ('372, Page 16, lines 12-14) It is examiner's position that the bonding to the topsheet would likely still occurs in the regions denoted by reference character 52 in Fig. 4. Thus, though Datta does not explicitly disclose this, Datta certainly suggests an adhesion section such as section 52 at which the attachment portion is folded up to the topsheet side and which is adhered to the topsheet substantially along both side portions in the longitudinal direction of the absorbent body, as can be seen in Fig. 4 of Datta.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 8-11 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "substantially" in claims 8 and 21 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Thus,

the phrase "substantially along" is of indeterminate scope, rendering the claim indefinite. Claims 9-11 are also rejected as they depend directly or ultimately from claim 8 and are thus also indefinite.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 8-11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al (WO 01/10372 A1).

With respect to **claim 8**: Datta discloses an absorbent article comprising a liquid-permeable topsheet 31 positioned at a surface 34 that is contactable with a human body, a non liquid-permeable backsheet 30 positioned at a surface opposite to the topsheet 31 and an absorbent body 32 provided between the topsheet and the backsheet. (Page 12, lines 2-5) A three-

dimensional gather is formed by a folding portion at which the backsheet is folded up to the topsheet side substantially along both side portions in a longitudinal direction of the absorbent body (see Fig. 3) Datta discloses an attachment portion of the topsheet at which a part of the folding portion is adhered to both side portions in the longitudinal direction of the topsheet inasmuch as the folding portion of backsheet is adhered to topsheet 31 along the longitudinal direction (Page 15, lines 8-11) The folding portion constitutes at least a part of the three-dimensional gather. Datta discloses an adhesion section at which the attachment portion is folded up to the topsheet side and is adhered to the topsheet inasmuch as the attachment portion forms part of side flaps 40 wherein the side flaps 40 are folded over and bonded to the body-facing side of the absorbent assembly or core, which requires adhesion to the topsheet. (Page 16, lines 12-14)

Datta discloses locations 52 shown in Fig. 4 where the side flaps 40 including the folding portions of backsheet 30 are bonded to themselves and discloses that alternatively they can be bonded to the topsheet. It is examiner's position that it would be readily apparent to one of ordinary skill in the art to use those same locations 52 as locations for bonding the side flap with said folding portion to the topsheet rather than to itself. Therefore, while Datta does not explicitly disclose that the folding portions and side flaps as a whole are adhered to the topsheet at said locations, it would be obvious to one of ordinary skill in the art to modify the article of Datta such that the adhesion of side flaps 40 with said folding portions therein occurs at identical locations to the disclosed locations for bonding the flap to itself with a reasonable expectation of success to ensure the side flaps remain in position to perform the intended function of preventing leakage. Briefly, with regard to the limitation "substantially along", such phrase is not clearly and explicitly defined in the specification, thus the claim is given its broadest reasonable interpretation. Thus the article fairly suggested by Datta meets the limitation of an adhesion

section at which the attachment portion is folded up to the topsheet side and which is adhered to the topsheet substantially along both side portions in the longitudinal direction of the absorbent body.

With respect to **claim 9**: The three-dimensional gather disclosed by Datta is composed of the folding portion and a non liquid-permeable nonwoven fabric in the form of respective side panel member 42 or 44 at least partially adhered to the folding portion (Page 15, lines 26-28, Page 16, lines 1,2), and the three-dimensional gather has a free end 51 structured with the non liquid-permeable nonwoven fabric. (Page 15, lines 32-35)

With respect to **claim 10**: The nonwoven fabric 42,44 is adhered to a surface opposite to a surface of the folding portion that faces the topsheet 31. (Fig. 3)

With respect to **claim 11**: The nonwoven fabric 42 or 44 is adhered to the backsheet 30 from an adhesion starting point 48 at an inner side in a width direction than a folding starting point of the folding portion. (Page 15, lines 27-29)

With respect to **claim 21**: Datta discloses an inner absorbent article comprising a liquid-permeable topsheet 31 positioned at a surface 34 that is contactable with a human body, a non liquid-permeable backsheet 30 positioned at a surface opposite to the topsheet 31 and an absorbent body 32 provided between the topsheet and the backsheet. (Page 12, lines 2-5) A three-dimensional gather is formed by a folding portion at which the backsheet is folded up to the topsheet side substantially along both side portions in a longitudinal direction of the absorbent body (see Fig. 3) Datta discloses an attachment portion of the topsheet at which a

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absorbent body.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761